

LESLIE E. DEVANEY
ANTHONY M. NOONE
L. J. GIRARD
S. M. HEATH
G. B. STRACK
TANT CITY ATTORNEYS

STEVEN B. GOLD
DEPUTY CITY ATTORNEY

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

Casey Gwinn
CITY ATTORNEY

CIVIL DIVISION
1200 THIRD AVENUE, SUITE 1200
SAN DIEGO, CALIFORNIA 92101-4184
TELEPHONE (619) 533-5800
FAX (619) 533-5847

MEMORANDUM

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SAN DIEGO, CALIF.

DATE: May 28, 1997
NAME: Bonnie Stone, Elections Analyst
City Clerk's Office
FROM: City Attorney
SUBJECT: Conflicts of Interest Filing Requirements for the Defined Contribution Plan
(SPSP/401K) Board of Trustees

BACKGROUND

The Trustees for the City of San Diego's Defined Contribution Plans "have the power and authority to invest, acquire, manage or dispose of the assets of the Master Trust. . . ." Master Trust Agreement, page 6, §4.2(a). Even though the Trustees can hire an Investment Manager, the Trustees have overriding authority on managing the investments. Master Trust Agreement, page 6, §§4.3(a), 4.3(e).

You have asked for direction regarding what reporting requirements are imposed by law on the Trustees, by virtue of their responsibilities as stated in the Master Trust Agreement.

QUESTION

What are the Statement of Economic Interest (a.k.a. "conflict of interest") reporting requirements for the Defined Contribution Plan Board of Trustees?

SHORT ANSWER

The Defined Contribution Plan Board of Trustees must file a "Form 700" Statement of Economic Interest, as set forth in Government Code section 87200.

May 28, 1997

DISCUSSION

The Political Reform Act of 1974 requires that public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by financial interests or the financial interests of their supporters. Cal. Gov't Code § 81001(b). To further this goal, assets and income of public officials who could be affected by their official actions must be disclosed. Cal. Gov't Code § 81002(c). Furthermore, such officials must disqualify themselves from acting in order that conflicts of interest are avoided. Cal. Gov't Code § 81002(c).

Although the Master Trust Agreement primarily pertains to City employee investments, there are occasions when the Trustees for the City of San Diego's Defined Contribution Plans do handle City investment funds as well. The Master Trust Agreement states that the corpus or income of the Trust Fund reverts back to the City when the Plan does not qualify or is terminated. Master Trust Agreement, pages 14-15. For example, funds from the Trust revert back to the City when an employee terminates from City employment before he or she is fully vested in the Supplemental Pension Savings Plan (SPSP). When this occurs, that percentage of employer contribution not vested is returned to the City.

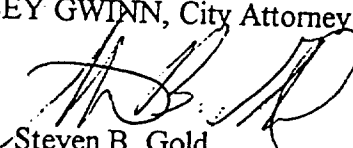
For this reason, some Trust Funds under the management of the Defined Contribution Plan Board of Trustees do revert to the City. Since the Trustees do manage these City funds, they are managing public investments. See also, Master Trust Agreement, page 7, §4.3(e).

Government Code section 87200 states, in pertinent part, that "[t]his article [Government Code sections 87200 - 87210] is applicable to . . . public officials who manage public investments." Form 700 was established by the Fair Political Practices Commission to assist public officials in complying with the Political Reform Act of 1974. According to the instructions that accompany Form 700, the Act requires individuals specified in Government Code 87200, including those who manage public investments, to fully disclose the personal assets and income described in Form 700. FPPC Form 700 (1996/97), Instructions, p. 2. Since the Defined Contribution Plan Board of Trustees manage public investments, each Trustee must complete Form 700 pursuant to Government Code section 87200.

If you have further questions, including any regarding disqualification in certain circumstances, please do not hesitate to contact me.

CASEY GWINN, City Attorney

By


Steven B. Gold

Deputy City Attorney

SBG:CCM:bf

cc: Defined Contribution Plan Board of Trustees
Chuck Mueller, Assistant Director, Risk Management
Valerie VanDeweghe, Plan Administrator, Risk Management
Cristie McGuire, DCA
Sharon Marshall, DCA
Lisa O'Neal, DCA